

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA  
13

14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST  
19 FINANCIAL PLANNING  
20 CORPORATION d/b/a WESTERN  
21 FINANCIAL PLANNING  
22 CORPORATION,

23 Defendants.

Case No.: 3:12-cv-2164-GPC-JMA

**ORDER APPROVING SALE OF  
WESTERN-OWNED DAYTON  
PROPERTY AND AUTHORITY TO  
PAY BROKER'S COMMISSION  
AND VACATING HEARING**

**[ECF No. 1791]**

24 Before the Court is the Receiver's Motion for (A) Approval of Western-Owned  
25 Dayton Property ("Property"), and (B) Authority to Pay Broker's Commission  
26 ("Motion") (ECF No. 1791). No opposition was filed. On January 12, 2021, Receiver  
27 filed a Notice of Non-Receipt of Qualified Overbids. ECF No. 1795. Based upon a  
28

review of the moving papers and the applicable law, the Court **GRANTS** the Receiver's Motion. The hearing on this matter set for February 19, 2021 is hereby **VACATED**.

### **BACKGROUND**

#### **A. The SEC Enforcement Action**

On January 21, 2016, the Court granted the SEC's motion for final judgment against Defendant Louis V. Schooler. ECF No. 1170. The Court granted the SEC's motion for revised final judgment on June 4, 2019. ECF No. 1724. The SEC had initiated this civil action against Defendant Schooler and Western Financial Planning Corporation ("Western") four years earlier, on account of their practice of defrauding investors into purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate, with cash or through financing, and simultaneously formed one or more General Partnerships ("GPs") to own the land. First Summary Judgment Order, ECF No. 1074 at 10. Western then sold General Partnership units to investors and sold the undeveloped real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

#### **B. The Decline of the General Partnership Assets**

In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at 2. Those professionals determined that the land was worth \$16,328,000 and that the net appraised value (appraised value less outstanding balances on all mortgages) of the properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the total funds that the general partners had invested in the land. *Id.* The Receiver further estimated that, based on the then-current appraised values of the land, the average GP investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

Three years later, soon after final judgment was entered, the Receiver moved for authority to conduct an Orderly Sale of the General Partnership Properties ("Orderly

1 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated  
 2 that the aggregate value in the GP accounts had been steadily decreasing while litigation  
 3 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.  
 4 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had  
 5 reason to believe that the value of the Receivership would continue to drastically  
 6 decrease through the end of 2016.<sup>1</sup> This decline, he noted, was due to three main factors:  
 7 (1) 14 of the 23 properties were not appreciating in value<sup>2</sup>; (2) the properties were not  
 8 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of  
 9 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,  
 10 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,  
 11 the Receiver concluded, because the money being spent to hold the GP properties was  
 12 disproportionately high in relation to the value of the GP’s real estate assets, the  
 13 Receivership was in a steady decline. *Id.*

14 In order to prevent the value of the Receivership from falling into further decline,  
 15 the Receiver proposed that the GP properties be sold in accordance with Court-approved  
 16 orderly sale procedures. *Id.* The Receiver’s proposal explained that the best way to  
 17 maximize the value of all of the GP assets for the benefit of all investors, irrespective of  
 18 any given investors’ direct property interest, was to initiate an orderly sale of the GP  
 19 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of  
 20 the GP properties, Western’s properties and asset recovery, would be worth \$21,804,826.  
 21 *Id.* at 16.

22 ///

23 ///

24 \_\_\_\_\_

25 <sup>1</sup> The Receiver provided the Court with projections that the Receivership would further decline to \$1.8  
 26 million by the end of 2016. Indeed, the Receiver’s projection has since proved to be accurate. The  
 27 Twentieth Interim Status Report submitted by the Receiver indicates that the Receivership’s current cash  
 and cash equivalent balance is \$666,113. ECF No. 1505 at 17.

28 <sup>2</sup> By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was  
 about \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

### 1           **C. The Receiver's Motion for Orderly Sale**

2           On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly  
3 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the  
4 investor-interveners—that is, those investors who were granted permission under Rule 23  
5 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time  
6 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale  
7 process.<sup>3</sup> ECF No. 1304.

8           In approving the Orderly Sale, the Court addressed and evaluated the concerns  
9 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing  
10 positions on whether the Orderly Sale would benefit the Receivership estate. *See*  
11 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon  
12 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,  
13 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration  
14 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF  
15 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the  
16 Receiver on how to maximize the value of the Receivership estate and, for the most part,  
17 agreed on the appraised value of the various GP properties. *Id.* As such, the Court  
18 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera  
19 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

20           On July 22, 2016, the Receiver moved for permission to engage CBRE, a real  
21 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera  
22 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.  
23 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.  
24 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a  
25

---

26  
27           <sup>3</sup> The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public  
28 sale process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a  
modified proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on  
August 30, 2016 (ECF No. 1359).

1 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court  
2 reviewed the Receiver's report and adopted the recommendations contained therein on  
3 December 12, 2016. ECF No. 1423.

#### 4 **D. Western-Owned Dayton Property**

5 The Property is comprised of approximately 440 acres of undeveloped land,  
6 located in Lyon County, Nevada, and referred to as Assessor Parcel No. 016-021-28.  
7 ECF No. 1791-2, Declaration of Thomas C. Hebrank ("Hebrank Decl.") ¶ 2. Prior to  
8 being transferred to the Qualified Settlement Fund Trust (or QSF Trust), set up to hold  
9 title to the properties, the property was held by Western, rather than any of the General  
10 Partnerships. *Id.* The Receiver did not obtain any appraisals of the Property because it  
11 was never held by a General Partnership. *Id.* ¶ 3. However, other properties in close  
12 proximity to the Property were appraised, including the Dayton II and Dayton III  
13 properties. The Receiver states the appraisals of other properties in close proximity  
14 indicate a valuation for the Property between \$150 and \$300 per acre. *Id.*

15 In April 2017, the Property was listed with licensed broker NAI Alliance. *Id.* ¶ 4.  
16 However, NAI Alliance was unable to generate any offers, and the Receiver switched  
17 brokers to C.B. Richard Ellis ("CBRE") in 2018. *Id.* CBRE still did not receive any  
18 offers, and at CBRE's suggestion the Receiver reduced the list price and used a  
19 residential-specific broker who had sold other receivership properties in the area, RCM  
20 Realty ("RCM"). *Id.* In November 2020, two offers were received. *Id.* ¶ 5. After  
21 negotiation of the terms, Receiver ultimately signed a Purchase and Sale Agreement and  
22 Joint Escrow Instructions ("Agreement") with Marilyn M. Chim as trustee of the Marilyn  
23 M. Chim Living Trust and/or assigns ("Buyer") for a purchase price of \$130,000 or \$295  
24 per acre. *Id.*; ECF No. 1791-3. The Receiver provided investors notice of the offer from  
25 Buyer via email shortly after it was received, and received no substantive responses to the  
26 notice. Hebrank Decl. ¶ 7.

27 On December 16, 2020, the Receiver filed his Motion, which seeks approval of the  
28 sale of the Property to Buyer for \$130,000, pursuant to the Agreement. ECF No. 1791.

1 In the Motion, the Receiver proposed a deadline for submission of qualified overbids,  
2 January 11, 2021 (“Overbid Deadline”). ECF No. 1791-1 at 8.

3 The Receiver then published notice of the opportunity to overbid for the property  
4 in the *Reno Journal-Gazette* for four consecutive weeks, pursuant to 28 U.S.C. §§  
5 2001(a) and 2002, as provided in the Motion. *Id.* at 5–8. On January 12, 2021, the  
6 Receiver filed Notice of Non-Receipt of Qualified Overbids Regarding the Motion. ECF  
7 No. 1795.

8 The Receiver requests that the Court approve the sale to Buyer at the price of  
9 \$130,000, pursuant to the Agreement, and authorize the Receiver to take the steps  
10 necessary to close the sale.

### 11 **E. Conclusion**

12 The Court finds that the purchase price of \$130,000 for the Western-Owned  
13 Dayton Property is reasonable in light of the fact that the Property has been marketed for  
14 three and a half years and the purchase price is the best offer received. Hebrank Decl. ¶  
15 8.

16 The Court is also satisfied that the Receiver’s notice of the sale adhered to the  
17 modified Orderly Sale procedures—which require that notice of the sale be published “in  
18 the county, state, or judicial district of the United States *wherein the realty is situated*,”  
19 28 U.S.C. § 2002 (emphasis added)—by publishing notice in the *Reno Journal-Gazette*, a  
20 newspaper of general circulation in Lyon County, Nevada, and by providing notice to the  
21 investors. Hebrank Decl. ¶ 7; ECF No. 1795.

22 Accordingly, and given that no opposition to the present Motion has been filed or  
23 raised, and no qualified overbid was received, the Court **GRANTS** Receiver’s motion for  
24 approval of sale.

25 ///

26 ///

27 ///

28 ///

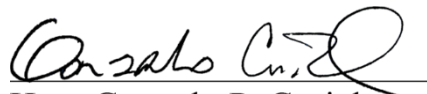
**ORDER**

The Receiver's Motion for (A) Approval of Western-Owned Dayton Property, and (B) Authority to Pay Broker's Commission ("Motion") of Thomas C. Hebrank ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"), having been reviewed and considered by this Court, the Receiver having notified the Court that no qualified overbids were received (ECF No. 1795), and for good cause appearing therefore, the Court finds as follows:

1. The Court **GRANTS** Receiver's motion;
2. The sale of the approximately 440 acres of undeveloped land known as the Western-Owned Dayton Property, which is located in Lyon County, Nevada referred to as Assessor Parcel No. 016-021-28, as described on Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion ("Property"), by Thomas C. Hebrank, as receiver, to Marilyn M. Chim as Trustee of the Marilyn M. Chim Living Trust and/or its assigns ("Buyer") is confirmed and approved;
3. The purchase price of \$130,000 for the Property is confirmed and approved;
4. The Receiver is immediately authorized to complete the sale transaction, including executing any and all documents as may be necessary and appropriate to do so; and
5. The Receiver is authorized to pay broker RCM Realty a commission of 6% of the purchase price, or \$7,800.

**IT IS SO ORDERED.**

Dated: February 8, 2021

  
 Hon. Gonzalo P. Curiel  
 United States District Judge